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OFFICE OF PETITIONS

In re Application of
Jaroslav Hynecek
Application No. 09/802,556
Filed: March 12, 2001
Attorney Docket No. ISE103

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ON PETITION

This is a decision on the "Petition to Accept Fee (No Penalty) filed May 22, 2006. The petition will be treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-cited application.

The petition is **DISMISSED**.

Petitioner is allowed a period for response of two-months from the mailing date of this decision. The response should be titled "Renewed Petition to Withdraw the Holding of Abandonment" Extensions of the time set for reply are available pursuant to 37 CFR 1.136.

The above-identified application became abandoned for failure to reply to the final Office action mailed November 17, 2005, which set a shortened statutory period for reply of three months from its mailing date. Extensions of the period set for reply were available pursuant to 37 CFR 1.136. An amendment was filed responsively on March 27, 2006, but was not entered because it presented new matter. It is noted that the response of March 27, 2006, was not accompanied by a request for an extension of time within the second month, which would have been necessary in order for the response to be considered timely. An Advisory Action mailed April 12, 2006 notified petitioner of that fact. No further responses were received within the allowable period. Although a Notice of Abandonment has not yet been mailed, the subject application became abandoned on February 18, 2006, by operation of law.

By the instant petition, petitioner argues that the holding of abandonment should be withdrawn and the Request for Continued Examination filed May 22, 2006, be recognized as timely received because petitioner did not receive the Advisory Action mailed April 12, 2006, because the USPTO allegedly mailed the Advisory Action to an incorrect address. Petitioner indicates that that a request to change the correspondence address was filed on January 27, 2005, and that the USPTO entered the change but, for some unknown reason, changed the correspondence address back to the old address at a later date. A review of the application file did not reveal a change of correspondence address filed around January 27, 2005. Further, petitioner has not established, by *prima facie* evidence, that the request to change the correspondence address was filed in January 2005. Such *prima facie* evidence would include either a copy of a certificate of mailing dated January 27, 2005, that accompanied the request for change of correspondence address or an itemized postcard date-stamped by the USPTO whereby the USPTO acknowledges receiving the request for change of correspondence address. Absent sufficient evidence to the contrary, both the final Office action and Advisory Action are deemed to have been sent to the correct correspondence address and petitioner's failure to file a timely response to the final Office action is cause

for the abandonment of the application. The petition is dismissed and the application is currently in an abandoned status. Petitioner may file a renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment or a petition under 37 CFR 1.137(b) to revive the application.

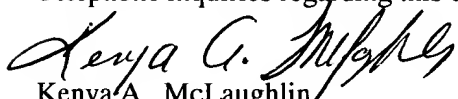
It is further noted that a change to the power of attorney and correspondence address for this application was filed on June 27, 2006. As such, Mr. John Vandigriff, who filed the instant petition, is no longer of record in the application. A courtesy copy of this decision is being mailed to Mr. Vandigriff, but no further communications relative to this application will be sent to Mr. Vandigriff.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.


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